



## Board News

Following a vote of the Association of Indiana Prosecuting Attorneys, Inc. the following prosecutors were elected to serve as Officers and Directors for the 2008 term:

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President-Elect	--	Curtis T. Hill, Jr.
Vice-President	--	Kent Apsley
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#### Two-Year Terms

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## Indiana Supreme Court Recent Decisions

- ♦ *Probation revocation can include a modification of terms in addition to executed time.*

*Prewitt v. State*, \_\_\_ N.E.2d \_\_\_ (Ind. 12/18/07). The Supreme Court has provided further clarification on trial court authority in resolution of violations of probation with its newest opinion *Prewitt v. State*. A trial court may require the defendant to serve a portion of his back up time **AND** modify the conditions of probation at the same time.

Russell Prewitt was serving a term of probation for a drug offense. After violating the rules of probation, he was ordered to complete his term in a halfway house program. Prewitt left the program after completing only half of the required time. Another petition to revoke probation was filed. The Court found that Prewitt had violated his probation and ordered him to serve a portion of his suspended time in the Department of Corrections followed by post-incarceration treatment at Richmond State Hospital as a new condition of probation.

Prewitt argued that based on IC 35-38-2-3(g) the Court could either give him executed time or it could amend the conditions of probation, but that the court could not do both.

IC 35-38-2-3 (g) states:

- (g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
- (1) continue the person on probation, with or without modifying or enlarging the conditions;
  - (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; *or*
  - (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

He argued that the qualifier “or” meant a Court could choose between the three options listed in subsection (g) but a Judge could not enforce multiple portions of the subsection.

The Supreme Court discounted this argument, finding that it would be contrary to legislative intent to provide discretion to enact various terms of probation at sen-

tencing but deny judges the ability to tailor the sentence to the offender after failing the original terms. “We do not perceive the word “or” in this statute as reflecting a legislative decision to put revocation decisions in a straightjacket” wrote Chief Justice Shepard. “Accordingly, we hold that Indiana Code 35-38-2-3(g) permits judges to sentence offenders using any one of or any combination of the enumerated options.” ✦

- ♦ *Sentence was inappropriate based on the nature of the offense.*

*Hollin v. State*, \_\_\_ N.E.2d \_\_\_ (Ind. 12/5/07). The Supreme Court used its constitutional authority to reduce the sentence of Steven Hollin. Eighteen-year-old Hollin conspired with a friend, Nathan Vogel, to burglarize unoccupied homes in Ripley County.

On November 8, 2005, Hollin and Vogel walked to a rural area and began knocking on doors. At the first house, their knock was answered by a woman. They pretended to need directions and then left. Continuing their search they tried another home that appeared to be vacant. When they didn’t receive an answer at either the front or back doors, they broke into the house through the garage door. Once inside they stole a bag containing approximately six hundred dollars. As they walked back towards town, the resident from the first house saw them and called police. Batesville police officer apprehended the pair as they were walking and both subsequently confessed.

Hollin was convicted of conspiracy to commit burglary and, despite his young age, was found to be a habitual offender. At sentencing the court found his criminal history to be the only aggravating factor. Hollin was sentenced to twenty years for the conspiracy to commit burglary charge. His sentence was then enhanced an additional twenty years for the habitual offender adjudication resulting in a forty year executed sentence.

Indiana Appellate Rule 7(B), allows a court to revise a sentence if it is “inappropriate in light of the nature of the offense and the character of the offender.” Hollin argued that the facts of the case did not warrant the length of time he was given.

In reviewing his sentence, the Supreme Court noted that neither Hollin nor Vogel were armed when

## Recent Decisions (continued)

they broke into the homes. They also recognized that by choosing houses that were vacant the men reduced the chance of violence. When reviewing Hollin's lengthy record, the Court noted that Hollin had mostly non-violent offenses. The one exception was a cruelty to an animal true finding as a juvenile. The majority of Hollin's convictions were theft related offenses. Given that the nature of the offense was non-violent and that Hollin's character did not demonstrate such "recalcitrance or depravity" that justified the lengthy sentence, the Court revised Hollin's sentence to the presumptive ten years on the conspiracy count and then enhanced the sentence by ten years for the habitual adjudication.

Justice Dickson dissented in writing to the decision. He opined that trial judges are in a better position to determine sentences which fit a defendant's actions. In his opinion, only the most extreme cases warrant appellate revision of a sentence. This case did not rise to that level and he would have affirmed the trial court. ✦

## Indiana Court of Appeals Recent Decisions

- ♦ *Both objective and subjective standards are implicated when claiming self defense.*

*Hood v. State*, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 12/6/07). Defendant was leaving a liquor store when he was almost struck by a car driven by the victim, Eon Truth. Words were exchanged and the victim approached Hood, who retrieved a gun from his vehicle. Hood fired two shots at Truth who began to leave. After firing several more shots at Truth, Hood fled the scene. Truth died from massive blood loss, and Hood was charged with Murder.

At a deposition, Hood's friend Earl testified that he thought Truth was reaching for a weapon in his waist band at the time Hood shot him. At trial, the State objected when defense counsel asked Earl whether he thought Truth was reaching for a weapon. The State argued that it was Hood's belief alone which was relevant to his claim of self-defense. Agreeing with the State, the Trial Court excluded the testimony. Hood was convicted and appealed.

On appeal, Hood argued he was prevented from presenting evidence of his defense. He contended that the

evidence would have shown that he reasonably feared Truth would harm him. To succeed on a claim of self defense a defendant must demonstrate that he reasonably believed the use of force was required to prevent serious bodily injury and that others who were similarly situated would have shared that belief.

In analysis, the court found "both objective and subjective standards are implicated; a defendant claiming self-defense is not necessarily restricted to producing evidence of his own state of mind or belief. It is ultimately the defendant's belief that is at issue; however, the beliefs of others may shed light upon the reasonableness of the defendant's belief." Finding that the excluded testimony was relevant to Hood's claim of self defense the Court reversed his conviction and remanded the case for re-trial. ✦

## United States Supreme Court Grants Certiorari

*Indiana v. Ahmad Edwards*. Ahmad Edwards was a shoplifter who stole shoes from a downtown Indianapolis department store. When chased by a store security officer, Edwards pulled out a gun firing several shots in the officer's direction. Edwards was eventually apprehended and charged with the shooting.

While the case was pending, Edwards was found to be incompetent to stand trial. He received psychiatric treatment and eventually determined to be competent. His competency was waning, however, and after several months was deemed again to be incompetent. During the pendency of the case, Edwards received multiple psychiatric evaluations and was judged to be incompetent and then regained competency several times. Edwards filed a motion with the court to proceed *pro se*. The trial court found that while Edwards was competent to stand trial he did not have the level of competency necessary to represent himself at trial. Defense counsel represented defendant during trial and Edwards was convicted.

The Indiana Supreme Court found that under the Federal Constitution Edwards had the right to proceed *pro se*. They held that a defendant who is competent to be tried for a crime must be permitted to proceed *pro se*.

*Certiorari* was granted by the Supreme Court on the issue of whether States may adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial.

Oral arguments have not yet been scheduled but are expected to occur sometime in the Spring.

The Court will address the meaning of the right to bear arms as described in the Second Amendment to the constitution. The Second Amendment states “a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” One comma has spurred the debate whether our founding fathers intended that the second amendment apply to each individual citizen or whether the right to bare arms applies only to keeping a Militia. A Washington D.C. regulation prohibiting possession of guns has been challenged. At issue is whether the District can constitutionally regulate who may have a weapon. The case is *District of Columbia, et al. v. Heller, Dick A.*

Other cases accepted by the Court include two (2) death penalty cases, *Blaze v. Kentucky*, and *Arave v. Hoffman*. In *Blaze*, the Court will review the constitutionality of the current lethal injection procedures, specifically whether it violates the Eighth Amendment protection from cruel or unusual punishment.

*Arave v. Hoffman*, which may redefine the guidelines used to determine competency of counsel, will examine the obligation of lawyers to explain to their clients the consequences of not accepting a plea agreement.

All decisions must be released by June 30, 2008. ✦

## Indiana Supreme Court Oral Argument

In January, the Indiana Supreme Court will hear oral arguments in two criminal cases.

Oral arguments are webcast live and are available at <http://www.indianacourts.org/apps/webcasts/>. Previous arguments are available in the archive section of the site.

**M***cDowell v. State* will be heard on January 3, 2008 from 9:45-10:25 EST.

Dawn McDowell and her boyfriend, Christopher Crume, were returning to their campsite after a two day birthday party. While driving they began to fight, and McDowell attempted to get out of the moving vehicle. Crume grabbed her by the hair and she stabbed him in the neck with a paring knife. After medical treatment he appeared to recover only to succumb to a dislodged blood clot. McDowell was charged and convicted in the Howard Circuit Court of Voluntary Manslaughter.

At issue is the Jury Instruction on intent to kill which

was given during trial. The jury was instructed on a separate page of paper that “Intent to kill may be inferred from evidence that a mortal wound was inflicted upon an unarmed person with a deadly weapon in the hands of the defendant.” McDowell raised several arguments to the instruction on appeal.

McDowell first argued, by placing the instruction separately on a page, the court was improperly emphasizing an evidentiary point. She also argued the duplicitous nature of the instruction and the use of the word “infer” without a definition was confusing. The Court of Appeals rejected each of these arguments.

Lastly, McDowell contended that the instruction relieved “the State of its burden of proof regarding intent by telling the jury that it may make an improper presumption.” In its analysis, the Court of Appeals noted *Brown v. State*, 691 N.E.2d 438 (Ind. 1998) found a similar instruction to be acceptable. The analysis centered on whether a jury was “required” to draw intent or “permitted” to draw intent from the instruction. Here the court found that the language “Intent... may be inferred” only permitted the jury to draw a conclusion based on the evidence but did not require it to do so. Therefore giving the instruction was not an abuse of discretion and the conviction was affirmed.

**J***ones v. State* is scheduled for argument on January 17, 2008 from 9:00-9:40 EST.

In 2002, Jones was convicted of Child Molest as a Class B Felony. He was given a split sentence and after serving the executed portion was turned over to probation. Jones violated probation by using illicit drugs, viewing pornography on a computer and having sexual relations with the victim of his child molest conviction.

At a probation revocation hearing, the State petitioned the court to evaluate Jones for sexual violent predator status. Pursuant to statute two psychiatrists evaluated the defendant and at a hearing he was found to be a sexually violent predator, a finding that was not issued during his original sentencing. On appeal, Jones contended that a sexually violent predator finding could only be made at the time of the original sentencing and could not be considered for the first time during a revocation of probation hearing. The Court of Appeals held that I.C. 35-38-1-7.5 does not limit when an offender may be considered a sexually violent predator. Given the nature of some violations, a court should be given the discretion to assign the status when appropriate regardless of whether that occurs at sentencing or based on a probation violation. ✦